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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIA GUADALUPE BALTAZAR
GARCIA; MIGUEL MORFIN
BERNABE,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-75893

Agency Nos. A75-256-379
A75-256-380

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Maria Guadalupe Baltazar Garcia and Miguel Morfin Bernabe, married
natives and citizens of Mexico, petition pro se for review of the Board of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Immigration Appeals' order dismissing their appeal from an immigration judge's ("IJ") decision denying their applications for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence the agency's continuous physical presence determination. *Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 850-51 (9th Cir. 2004). We review de novo claims of constitutional violations in immigration proceedings. *Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We grant in part and deny in part the petition for review and remand.

An intervening change in the law requires us to remand on the issue of Bernabe's continuous physical presence. In *Ibarra-Flores*, we held that administrative voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the alien is informed of the terms of the departure and knowingly and voluntarily accepts them. *See* 439 F.3d at 619; *see also Tapia v. Gonzales*, 430 F.3d 997, 1004 (9th Cir. 2005). The nature of Bernabe's departures is unclear from the record.

We therefore remand for the agency to reconsider the issue of Bernabe's continuous physical presence.

The adverse credibility finding against Baltazar Garcia was based mainly on an inconsistency between her cancellation application and her testimony about her

entry date. Baltazar Garcia was represented by Walter Pineda, who resigned from the practice of law with charges pending in 2006. Because Pineda's role in preparing Baltazar Garcia's application is unclear, and because she provided a witness who corroborated her testimony regarding her entry date, we remand for the agency to reconsider its adverse credibility determination.

Petitioners' contention that the agency violated their due process rights by disregarding their evidence of physical presence is not supported by the record.

PETITION FOR REVIEW GRANTED in part; DENIED in part; REMANDED.